

United States District Court
Western District Of Texas
Austin Division

Grassroots Leadership,

Plaintiff,

v.

No. 1:19-CV-872-RP

**U.S. Department of Homeland Security;
U.S. Immigration and Customs
Enforcement,**

Defendants.

Answer

Defendants U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement, by and through the United States Attorney for the Western District of Texas, file this Answer to Plaintiff's Complaint.¹

I. INTRODUCTION

1. The allegations contained in Paragraph 1 consist of Plaintiff's characterization of this action and Plaintiff's conclusions of law, to which no response is required. To the extent a response is required, Defendants admit this action purports to be brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* and Defendants deny the remaining allegations.

¹ For ease of reference, Defendants' Answer replicates the headings contained in the Complaint. Although Defendants contend that no response is required to such headings, to the extent a response is deemed required and to the extent those headings and titles may be construed to contain factual allegations, those allegations are denied.

2. The allegations contained in Paragraph 2 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 2.

3. The allegations contained in the first sentence of Paragraph 3 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegations. The remaining allegations contained in Paragraph 3 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the remaining allegations contained in Paragraph 3.

4. Defendants admit the allegation contained in the first sentence of Paragraph 4, and respectfully refer the Court to the request letter dated November 28, 2018 for a complete and accurate description of its contents. *See* Pl. Compl. at Exhibit 1. Defendants admit to the allegation contained in the second sentence of Paragraph 4 and respectfully refer the Court to the request letter dated June 24, 2019 for a complete and accurate description of its contents. *See* Pl. Compl. at Ex. 4. Defendants further admit that it has not provided a final response to Plaintiff's November 2018 request. Defendants deny that it has failed to respond or produce documents in response to its June 2019 request. Defendants further deny all remaining allegations in Paragraph 4.

II. JURISDICTION & VENUE

5. The allegations contained in Paragraph 5 consist of Plaintiff's conclusions of law regarding subject matter jurisdiction and personal jurisdiction, to which no response is required. To the extent that a response is required, Defendants admit that this action purports to be brought pursuant to the FOIA, 5 U.S.C. § 552, *et seq.*, and that this Court has subject matter jurisdiction

over the claim related to Plaintiff's November 2018 request only. Defendants deny the remaining allegations in Paragraph 5.

6. The allegations contained in Paragraph 6 consist of Plaintiff's conclusions of law regarding venue, to which no response is required. To the extent that a response is required, Defendants admit that 5 U.S.C. § 552(a)(4)(B) governs venue in actions brought pursuant to the FOIA, and that venue is proper in this Court.

III. PARTIES

7. The allegations contained in Paragraph 7 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegations.

8. Defendants admit that the U.S. Department of Homeland Security (DHS) is a federal agency subject to the provisions of the FOIA, 5 U.S.C. § 552, *et seq.* Defendants further admit that it has documents that are responsive to Plaintiff's request. Defendants deny the remaining allegations in Paragraph 8.

9. Defendants admit that ICE is a federal agency and component of DHS and is subject to the provisions of the FOIA, 5 U.S.C. § 552, *et seq.* Defendants deny the remaining allegations in Paragraph 9.

IV. STATUTORY BACKGROUND

10. The allegations contained in Paragraph 10 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

11. The allegations contained in Paragraph 11 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

12. The allegations contained in Paragraph 12 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

13. The allegations contained in Paragraph 13 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

14. The allegations contained in Paragraph 14 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

15. The allegations contained in Paragraph 15 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

V. FACTUAL BACKGROUND

16. The allegations contained in Paragraph 16 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 16.

17. The allegations contained in Paragraph 17 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the allegation contained in the first sentence of Paragraph 17. With regard to the

second sentence of Paragraph 17, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegations.

18. The allegations contained in Paragraph 18 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 18.

19. The allegations contained in Paragraph 19 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 19.

20. The allegations contained in Paragraph 20 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 20.

21. The allegations contained in Paragraph 21 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegations.

22. The allegation contained in the first sentence of Paragraph 22 consists of Plaintiff's characterization of itself and does not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegation. The remaining allegations contained in Paragraph 22 do not set forth a claim for relief or aver facts in support of a claim to which a response is required and therefore Defendants deny these allegations.

23. The allegations contained in Paragraph 23 consists of Plaintiff's characterization of itself and does not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegations.

24. The allegation contained in the first sentence of Paragraph 24 consists of Plaintiff's characterization of itself and does not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny the allegation. The remaining allegations contained in Paragraph 24 do not set forth a claim for relief or aver facts in support of a claim to which a response is required and therefore Defendants deny these allegations.

25. The allegations contained in Paragraph 25 do not set forth a claim for relief or aver facts in support of a claim to which a response is required and therefore Defendants deny these allegations.

26. The allegations contained in the first two sentences of Paragraph 26 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny these allegations. The remaining allegations in Paragraph 26 constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

27. The allegations contained in Paragraph 27 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response

is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny these allegations.

28. Defendants deny that it has failed to provide responsive records in response to Plaintiff's FOIA requests.

29. The allegations contained in the first sentence of Paragraph 29 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny these allegations. The remaining allegations contained in Paragraph 29 do not set forth a claim for relief or aver facts in support of a claim to which a response is required and therefore Defendants deny these allegations.

30. The allegations contained in Paragraph 30 consist of Plaintiff's characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny these allegations

VI. PLAINTIFF'S FOIA REQUEST

November 2018 FOIA Request

31. Defendants admit that Grassroots Leadership submitted a FOIA request to ICE on November 28, 2018, and respectfully refer the Court to the FOIA request for a complete and accurate description of its contents. *See* Pl. Compl. at Exhibit 1.

32. Defendants admit that ICE acknowledged receipt of Plaintiff's November 28, 2018 FOIA request on December 3, 2018, and respectfully refer the Court to its email for a complete and accurate description of its contents. *See* Pl. Compl. at Ex. 2.

33. Defendants admit that it sent an email to Grassroots Leadership, dated December 11, 2018, and granted its request for a fee waiver. Defendants also admit that it invoked an extension to process Plaintiff's request under 5 U.S.C. § 552(a)(6)(B). Defendants respectfully refer the Court to its email for a complete and accurate description of its contents. *See* Pl. Compl. at Ex. 3.

34. Defendants admit that it has not provided any records in response to Plaintiff's November 28, 2018 FOIA request as of the date of this filing.

June 2019 FOIA Request

35. Defendants admit that Grassroots Leadership submitted a FOIA request to ICE dated June 24, 2019, and respectfully refer the Court to the FOIA request for a complete and accurate description of its contents. *See* Pl. Compl. Ex. 4.

36. Admit.

37. Defendants admit acknowledging receipt of Plaintiff's June 24, 2019 FOIA request on July 8, 2019 and respectfully refer the Court to the July 8, 2019 email for a complete and accurate description of its contents. Pl. Compl. Ex. 5.

38. Defendants deny that it has not provided any responsive records or provided a response to Plaintiff's June 24, 2019 FOIA request.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

39. The allegations contained in Paragraph 39 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

40. The allegations contained in Paragraph 40 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

41. The allegations contained in Paragraph 41 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

42. The allegations contained in Paragraph 42 of the Complaint constitute legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

43. Defendants admit that it has not produced records or a final response to Plaintiff's November 2018 FOIA request. The remaining allegation in Paragraph 41 constitutes a legal conclusion, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

44. Defendants deny that it has failed to produce any records or a final response to Plaintiff's June 2018 [sic] FOIA request. The remaining allegation in Paragraph 42 constitutes a legal conclusion, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

VIII. CAUSES OF ACTION

45. Defendants incorporate by reference its responses to all preceding paragraphs.

46. The allegation contained in Paragraph 46 contains Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

47. The allegation contained in Paragraph 47 contains Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

48. The allegation contained in Paragraph 48 contains Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

49. The allegation contained in Paragraph 49 contains Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

50. The allegation contained in Paragraph 50 contains Plaintiff's conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegation.

IX. PRAYER FOR RELIEF

The remainder of the Complaint consists of Plaintiff's Prayer for Relief, to which no response is required. To the extent that a response is required, Defendants deny the allegations in the Prayer for Relief, and denies that Plaintiff is entitled to any of the relief requested in Paragraphs 1 through 50, or to any relief whatsoever from the Defendant.

X. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Any information that Defendants have withheld, or will withhold, in response to Plaintiff's FOIA request may be exempt in whole or in part from public disclosure under the FOIA, 5 U.S.C. § 552 *et seq.*, and the Privacy Act, 5 U.S.C. § 552(a), *et seq.*

THIRD AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over any matter to the extent Plaintiff failed to satisfy prerequisites to suit, as well as over any requests or allegations that are not contained in a FOIA request at issue in this action. Specifically, the Court lacks jurisdiction over Plaintiff's claims related to the June 2019 FOIA request, and that claim should be dismissed.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has not alleged sufficient factual and/or legal bases for its request for costs and/or attorney's fees.

FIFTH AFFIRMATIVE DEFENSE

There is no provision of the FOIA for obtaining declaratory relief. At all times alleged in the Complaint, Defendants were acting in good faith, with justification, and pursuant to authority. Defendants respectfully request and reserves the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known through the course of the litigation.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust administrative remedies.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray that:

1. Plaintiff take nothing by its Complaint;
2. The Complaint be dismissed with prejudice;
3. No injunctive relief be awarded to Plaintiff;
4. Defendants be awarded its costs of suit;
5. Judgment be entered in favor of Defendants;
6. The Court grant such other and further relief as it may deem proper.

Dated: November 11, 2019

Respectfully submitted,

JOHN F. BASH

United States Attorney

By: /s/ Liane Noble

LIANE NOBLE

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on November 11, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record in this case.

/s/ Liane Noble

LIANE NOBLE

Assistant United States Attorney